

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 04-10027-PBS
)	
MATTHEW VICKERS)	

SENTENCING MEMORANDUM

Defendant, Matthew Vickers, respectfully submits this memorandum to alert the Court to issues which the parties expect to arise at defendant's Rule 11 and sentencing hearing, presently scheduled for December 21, 2004. The Court, on defendant's assented-to motion, previously ordered the Probation Department to conduct a pre-plea presentence investigation. The Probation Department has completed its investigation and the parties are prepared for plea and sentencing.

The instant indictment is one of two now pending in United States District Court for the District of Massachusetts. The companion case, United States v. Matthew Vickers, No. 03-10392-RCL, alleges possession of a firearm by a convicted felon. Judge Lindsay also ordered a pre-plea presentence investigation and that matter. The Probation Department has issued its final Presentence Report and the plea and sentencing hearing is scheduled for January 10, 2005.

After review of the two presentence reports, the parties agree that the two cases should be disposed of by plea together. This is largely because the parties and the Probation Department

have determined that, as a result of the ten-year mandatory minimum sentence that applies in this matter, the felon-in-possession case before Judge Lindsay will not affect the ultimate sentence that defendant will receive.¹ The parties agree that expeditious disposal of both cases is therefore in the interest of judicial economy and have, in the last two days, negotiated and prepared a plea agreement proposing a disposition of the two matters.

The parties therefore request that the Court allow defendant to plead guilty to a superseding information that alleges the two drug counts in the instant matter along with the two firearms counts that constitute the indictment in the Judge Lindsay matter. Defendant will admit to facts underlying both the drug counts in the instant matter and the felon-in-possession count in the Judge Lindsay matter. The parties anticipate filing a plea agreement in the case which specifies that the government will recommend a sentence of ten (10) years, the lowest sentence permissible given the mandatory minimum sentence, and that the

¹This is so because, under the sentencing guidelines, adding the additional ungroupable possession of firearm offense results in a two-level increase in the drug offense level in this matter for a total offense level of 25 after acceptance of responsibility, resulting in a guideline sentencing range of 100-125 months. The low end of the range is below the statutory mandatory minimum sentence of ten years.

sentence will encompass both cases. The government will then dismiss the indictment presently pending before Judge Lindsay.²

For these reasons, the parties request that the Court allow defendant to plead to an information alleging the conduct in both indictments and sentence defendant in the manner proposed by the parties' plea agreement.³

MATTHEW VICKERS,
By His Attorney:

/s/ Timothy Watkins
Timothy Watkins
B.B.O. #567992
Federal Defender Office
408 Atlantic Ave., Third Floor
Boston, MA 02210
(617) 223-8061

²Judge Lindsay has given his oral assent to dismissal of the indictment before him should this Court accept the procedure proposed by the parties.

³The Probation Department has indicated that it will prepare a single Presentence Report to consolidate the heretofore separate reports, and that such a report can be prepared within a short period of time. Given that there will be no dispute over the arithmetic calculation of the sentence, the parties suggest that the Court can and should sentence defendant at today's hearing and allow the Probation Department to submit the report when it becomes available.